

AMENDED IN ASSEMBLY APRIL 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2305

Introduced by Assembly Member Ridley-Thomas

February 21, 2014

An act to amend Sections 21510, 25400, and 25850 of the Penal Code, relating to weapons.

LEGISLATIVE COUNSEL'S DIGEST

AB 2305, as amended, Ridley-Thomas. Weapons.

Under existing law, every person who carries a switchblade knife upon the person is guilty of a misdemeanor. Under existing law, a person is guilty of carrying a concealed firearm when the person carries concealed any handgun upon the person. Under existing law, a person is guilty of carrying a loaded firearm when the person carries a loaded firearm on the person while in any public place or on any public street.

This bill would make it a misdemeanor to carry a switchblade knife on or about the person. The bill would make a person who carries concealed a handgun on or about the person guilty of carrying a concealed firearm. The bill would make any person who carries a loaded firearm on or about the person guilty of carrying a loaded firearm. *The bill would define the term "on or about the person" for the purposes of these provisions and would make technical, conforming changes.* By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21510 of the Penal Code is amended to
2 read:

3 21510. (a) A person who commits any of the following acts
4 with a switchblade knife having a blade two or more inches in
5 length is guilty of a misdemeanor:

6 ~~(a)~~

7 (1) Possesses the knife in the passenger's or driver's area of any
8 motor vehicle in any public place or place open to the public.

9 ~~(b)~~

10 (2) Carries the knife on or about the person.

11 ~~(c)~~

12 (3) Sells, offers for sale, exposes for sale, loans, transfers, or
13 gives the knife to any other person.

14 (b) *For purposes of this section, "on or about the person"*
15 *includes upon the body of a person, in the attire or clothing of a*
16 *person, in a bag or container carried by the person, or in close*
17 *proximity to, within the immediate reach of, or conveniently*
18 *accessible to, the person.*

19 SEC. 2. Section 25400 of the Penal Code is amended to read:

20 25400. (a) ~~A~~ *Except as otherwise provided by law, a person*
21 *is guilty of carrying a concealed firearm if the person commits any*
22 *of the following acts:*

23 (1) Carries concealed within any vehicle that is under the
24 person's control or direction any pistol, revolver, or other firearm
25 capable of being concealed upon the person.

26 (2) Carries concealed on or about the person any pistol, revolver,
27 or other firearm capable of being concealed upon the person.

28 (3) Causes to be carried concealed within any vehicle in which
29 the person is an occupant any pistol, revolver, or other firearm
30 capable of being concealed upon the person.

31 (b) *For purposes of this section, "on or about the person"*
32 *includes upon the body of a person, in the attire or clothing of a*
33 *person, in a bag or container carried by the person, or in close*

1 *proximity to, within the immediate reach of, or conveniently*
2 *accessible to, the person.*

3 ~~(b)~~

4 (c) A firearm carried openly in a belt holster is not concealed
5 within the meaning of this section.

6 ~~(e)~~

7 (d) Carrying a concealed firearm in violation of this section is
8 punishable as follows:

9 (1) If the person previously has been convicted of any felony,
10 or of any crime made punishable by a provision listed in Section
11 16580, as a felony.

12 (2) If the firearm is stolen and the person knew or had reasonable
13 cause to believe that it was stolen, as a felony.

14 (3) If the person is an active participant in a criminal street gang,
15 as defined in subdivision (a) of Section 186.22, under the Street
16 Terrorism Enforcement and Prevention Act (Chapter 11
17 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

18 (4) If the person is not in lawful possession of the firearm or
19 the person is within a class of persons prohibited from possessing
20 or acquiring a firearm pursuant to Chapter 2 (commencing with
21 Section 29800) or Chapter 3 (commencing with Section 29900)
22 of Division 9 of this title, or Section 8100 or 8103 of the Welfare
23 and Institutions Code, as a felony.

24 (5) If the person has been convicted of a crime against a person
25 or property, or of a narcotics or dangerous drug violation, by
26 imprisonment pursuant to subdivision (h) of Section 1170, or by
27 imprisonment in a county jail not to exceed one year, by a fine not
28 to exceed one thousand dollars (\$1,000), or by both that
29 imprisonment and fine.

30 (6) If both of the following conditions are met, by imprisonment
31 pursuant to subdivision (h) of Section 1170, or by imprisonment
32 in a county jail not to exceed one year, by a fine not to exceed one
33 thousand dollars (\$1,000), or by both that fine and imprisonment:

34 (A) The pistol, revolver, or other firearm capable of being
35 concealed upon the person is loaded, or both it and the unexpended
36 ammunition capable of being discharged from it are in the
37 immediate possession of the person or readily accessible to that
38 person.

39 (B) The person is not listed with the Department of Justice
40 pursuant to Section 11106 as the registered owner of that pistol,

1 revolver, or other firearm capable of being concealed upon the
2 person.

3 (7) In all cases other than those specified in paragraphs (1) to
4 (6), inclusive, by imprisonment in a county jail not to exceed one
5 year, by a fine not to exceed one thousand dollars (\$1,000), or by
6 both that imprisonment and fine.

7 ~~(d)~~

8 (e) (1) Every person convicted under this section who
9 previously has been convicted of a misdemeanor offense
10 enumerated in Section 23515 shall be punished by imprisonment
11 in a county jail for at least three months and not exceeding six
12 months, or, if granted probation, or if the execution or imposition
13 of sentence is suspended, it shall be a condition thereof that the
14 person be imprisoned in a county jail for at least three months.

15 (2) Every person convicted under this section who has
16 previously been convicted of any felony, or of any crime made
17 punishable by a provision listed in Section 16580, if probation is
18 granted, or if the execution or imposition of sentence is suspended,
19 it shall be a condition thereof that the person be imprisoned in a
20 county jail for not less than three months.

21 ~~(e)~~

22 (f) The court shall apply the three-month minimum sentence as
23 specified in subdivision ~~(d)~~, (e), except in unusual cases where the
24 interests of justice would best be served by granting probation or
25 suspending the imposition or execution of sentence without the
26 minimum imprisonment required in subdivision ~~(d)~~ (e) or by
27 granting probation or suspending the imposition or execution of
28 sentence with conditions other than those set forth in subdivision
29 ~~(d)~~, (e), in which case, the court shall specify on the record and
30 shall enter on the minutes the circumstances indicating that the
31 interests of justice would best be served by that disposition.

32 ~~(f)~~

33 (g) A peace officer may arrest a person for a violation of
34 paragraph (6) of subdivision ~~(e)~~ (d) if the peace officer has probable
35 cause to believe that the person is not listed with the Department
36 of Justice pursuant to Section 11106 as the registered owner of the
37 pistol, revolver, or other firearm capable of being concealed upon
38 the person, and one or more of the conditions in subparagraph (A)
39 of paragraph (6) of subdivision ~~(e)~~ (d) is met.

40 SEC. 3. Section 25850 of the Penal Code is amended to read:

1 25850. (a) A person is guilty of carrying a loaded firearm
2 when the person carries a loaded firearm on or about the person
3 or in a vehicle while in any public place or on any public street in
4 an incorporated city or in any public place or on any public street
5 in a prohibited area of unincorporated territory.

6 (b) In order to determine whether or not a firearm is loaded for
7 the purpose of enforcing this section, peace officers are authorized
8 to examine any firearm carried by anyone on or about the person
9 or in a vehicle while in any public place or on any public street in
10 an incorporated city or prohibited area of an unincorporated
11 territory. Refusal to allow a peace officer to inspect a firearm
12 pursuant to this section constitutes probable cause for arrest for
13 violation of this section.

14 (c) *For purposes of this section, "on or about the person"*
15 *includes upon the body of a person, in the attire or clothing of a*
16 *person, in a bag or container carried by the person, or in close*
17 *proximity to, within the immediate reach of, or conveniently*
18 *accessible to, the person.*

19 ~~(e)~~

20 (d) Carrying a loaded firearm in violation of this section is
21 punishable, as follows:

22 (1) Where the person previously has been convicted of any
23 felony, or of any crime made punishable by a provision listed in
24 Section 16580, as a felony.

25 (2) Where the firearm is stolen and the person knew or had
26 reasonable cause to believe that it was stolen, as a felony.

27 (3) Where the person is an active participant in a criminal street
28 gang, as defined in subdivision (a) of Section 186.22, under the
29 Street Terrorism Enforcement and Prevention Act (Chapter 11
30 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

31 (4) Where the person is not in lawful possession of the firearm,
32 or is within a class of persons prohibited from possessing or
33 acquiring a firearm pursuant to Chapter 2 (commencing with
34 Section 29800) or Chapter 3 (commencing with Section 29900)
35 of Division 9 of this title, or Section 8100 or 8103 of the Welfare
36 and Institutions Code, as a felony.

37 (5) Where the person has been convicted of a crime against a
38 person or property, or of a narcotics or dangerous drug violation,
39 by imprisonment pursuant to subdivision (h) of Section 1170, or
40 by imprisonment in a county jail not to exceed one year, by a fine

1 not to exceed one thousand dollars (\$1,000), or by both that
2 imprisonment and fine.

3 (6) Where the person is not listed with the Department of Justice
4 pursuant to Section 11106 as the registered owner of the handgun,
5 by imprisonment pursuant to subdivision (h) of Section 1170, or
6 by imprisonment in a county jail not to exceed one year, or by a
7 fine not to exceed one thousand dollars (\$1,000), or both that fine
8 and imprisonment.

9 (7) In all cases other than those specified in paragraphs (1) to
10 (6), inclusive, as a misdemeanor, punishable by imprisonment in
11 a county jail not to exceed one year, by a fine not to exceed one
12 thousand dollars (\$1,000), or by both that imprisonment and fine.

13 ~~(d)~~

14 (e) (1) Every person convicted under this section who has
15 previously been convicted of an offense enumerated in Section
16 23515, or of any crime made punishable under a provision listed
17 in Section 16580, shall serve a term of at least three months in a
18 county jail, or, if granted probation or if the execution or imposition
19 of sentence is suspended, it shall be a condition thereof that the
20 person be imprisoned for a period of at least three months.

21 (2) The court shall apply the three-month minimum sentence
22 except in unusual cases where the interests of justice would best
23 be served by granting probation or suspending the imposition or
24 execution of sentence without the minimum imprisonment required
25 in this section or by granting probation or suspending the
26 imposition or execution of sentence with conditions other than
27 those set forth in this section, in which case, the court shall specify
28 on the record and shall enter on the minutes the circumstances
29 indicating that the interests of justice would best be served by that
30 disposition.

31 ~~(e)~~

32 (f) A violation of this section that is punished by imprisonment
33 in a county jail not exceeding one year shall not constitute a
34 conviction of a crime punishable by imprisonment for a term
35 exceeding one year for the purposes of determining federal firearms
36 eligibility under Section 922(g)(1) of Title 18 of the United States
37 Code.

38 ~~(f)~~

39 (g) Nothing in this section, or in Article 3 (commencing with
40 Section 25900) or Article 4 (commencing with Section 26000),

1 shall preclude prosecution under Chapter 2 (commencing with
2 Section 29800) or Chapter 3 (commencing with Section 29900)
3 of Division 9 of this title, Section 8100 or 8103 of the Welfare and
4 Institutions Code, or any other law with a greater penalty than this
5 section.

6 ~~(g)~~

7 *(h)* Notwithstanding paragraphs (2) and (3) of subdivision (a)
8 of Section 836, a peace officer may make an arrest without a
9 warrant:

10 (1) When the person arrested has violated this section, although
11 not in the officer's presence.

12 (2) Whenever the officer has reasonable cause to believe that
13 the person to be arrested has violated this section, whether or not
14 this section has, in fact, been violated.

15 ~~(h)~~

16 *(i)* A peace officer may arrest a person for a violation of
17 paragraph (6) of subdivision ~~(e)~~; *(d)*, if the peace officer has
18 probable cause to believe that the person is carrying a handgun in
19 violation of this section and that person is not listed with the
20 Department of Justice pursuant to Section 11106 as the registered
21 owner of that handgun.

22 SEC. 4. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.